

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

ANNIE KANNIKA, et al.,

Plaintiffs,

v.

US CITIZENSHIP AND IMMIGRATION  
SERVICES, et al.,

Defendants.

Case No. C20-547RSM

ORDER DENYING MOTIONS TO  
COMPEL AND FOR EXTENSION OF  
TIME

This matter comes before the Court on Plaintiffs’ “Motion to Compel Production of A-File Administrative Record” and Motion for “Temporary Abeyance of Motion Schedule.” Dkts. #29 and #30. Plaintiffs again argue that they need more time to file a motion for summary judgment because the administrative record provided to Plaintiff and the Court is incomplete and unnecessarily redacted.

In this case brought under the Administrative Procedure Act (“APA”), Plaintiffs are “seeking review of a decision of the U.S. Citizenship & Immigration Services (USCIS), wherein the agency denied Plaintiff Annie Kannika’s Petition for Alien Relative (I-130) seeking to classify her husband, Yoeun Phoeun as a ‘immediate relative’ for the purpose of allowing him to reside with her in the United States.”. Dkt. #1. To briefly summarize the issue before the

1 Court, Defendants have submitted to the Court an administrative record that they say was based  
2 on what was before USCIS when it made its determination that the marriage between Mr.  
3 Phoeun and Mrs. Krub was a “sham.” Plaintiffs argue that the entire “A-file”<sup>1</sup> should be in the  
4 administrative record, that they have obtained the entire A-file through a FOIA request, and that  
5 certain documents are missing or unnecessarily redacted in the administrative record.  
6

7 Plaintiffs have raised this issue with the Court previously. *See* Dkt. #14. On December  
8 4, 2020, the Court issued an Order finding that “many of the issues initially raised in this  
9 Motion has become moot as Defendants have clarified the nature of what was provided to  
10 Plaintiffs and sent more material to Plaintiffs.” Dkt. #25. The Court extended the deadline for  
11 Plaintiff to file summary judgment briefing and assumed that all issues would be promptly  
12 resolved between the parties without further Court action. The Court once more extended the  
13 deadline for summary judgment briefing based on a stipulation from the parties. Dkt. #28. The  
14 latest deadline for Plaintiffs to file was January 6, 2021.  
15

16 Instead of moving this case forward, on January 6 Plaintiffs filed the instant Motions.  
17 Plaintiffs’ Motion for Temporary Abeyance of Motion Schedule states, in its entirety:  
18

19 Plaintiffs’ motion for summary judgement is due on January 6,  
20 2021. For the reasons stated in Plaintiffs’ Motion to Compel  
21 Production of A-File Administrative Record (Dkt. 29), Plaintiffs  
22 respectfully ask the Court to hold the motion schedule in abeyance  
23 pending the outcome of the Court’s decision on that motion.

24 Dkt. #30 at 1–2. This is a motion for relief from the deadline and, under this Court’s Local  
25 Rules, a motion for relief from a deadline should, whenever possible, be filed sufficiently in  
26 advance of the deadline to allow the court to rule on the motion prior to the deadline. “Parties  
27 should not assume that the motion will be granted and must comply with the existing deadline  
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<sup>1</sup> The A-file at issue is, according to Plaintiffs, the complete agency record of Mr. Phoeun’s applications and supporting evidence, submitted in connection with his eight-year marriage to U.S. Citizen Savy Krub and his current marriage to Annie Kannika.

1 unless the court orders otherwise.” LCR 7(j). The Court finds that Plaintiffs have not been  
2 diligent in filing the instant Motion for Extension of Time. They have not set forth any  
3 explanation for their delay in filing this Motion on the actual date of the deadline in question,  
4 nor why they were unable to file their summary judgment motion in some form by the existing  
5 deadline. The Motion could easily be denied on that basis.  
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7 The Court has looked at the parallel Motion to Compel and will rule on these together.  
8 Although Plaintiff has previously stated, “Plaintiffs’ counsel is in possession of an  
9 administrative record obtained through a Freedom of Information Act Request that contains 670  
10 pages,” Dkt. #14 at 2, the instant Motion to Compel seeks those very same records and states  
11 “[w]ithout examining the entire body evidence that the agency had access to, Plaintiffs cannot  
12 have confidence that they can make their full case,” Dkt. #29 at 3. These positions do not seem  
13 consistent. Perhaps more logically, Plaintiffs argue that “the Court is also being denied access  
14 to the record that the law requires the Defendants to place before it.” *Id.* However, Defendants  
15 point out that “Plaintiffs could have, but have not, moved to supplement the record with specific  
16 documents they claim to be relevant.” Dkt. #32 at 3. The Court agrees. Plaintiffs have had  
17 multiple opportunities to move this case forward, relying on those documents that were in the  
18 administrative record or supplementing with documents that were obtained through a FOIA  
19 request. Instead we are arguing about discovery months after the summary judgment briefing  
20 was supposed to be filed.  
21  
22

23 In an APA action, the government is required to file a copy of the record of the agency  
24 proceeding, which Defendants filed. When the government certifies an administrative record,  
25 the government is entitled to a presumption that the record is the full, complete record, a  
26 presumption that can only be rebutted with “clear evidence to the contrary.” *Cook Inletkeeper*  
27  
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1 v. *EPA*, 400 F. App'x 239, 240 (9th Cir. 2010). Plaintiffs' Motion is based on the assumption  
 2 that their entire A-files are the record of the agency proceeding in this case. They have not  
 3 shown such to be the case. Plaintiffs have not submitted any evidence, much less "clear  
 4 evidence," that the administrative record is missing files from the agency proceeding at issue.  
 5 Plaintiffs speculate as to what is missing and fail to point to specific documents from the FOIA,  
 6 redacted or otherwise, that they believe should have been included in the administrative record.  
 7 Plaintiffs fail to demonstrate a need for specific documents. The Court also notes that this  
 8 Motion to Compel was filed too late for the Court to possibly grant relief in a timely fashion.  
 9 Given all of the above, the Court will deny the Motion to Compel and thus both Motions.  
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11 After Plaintiffs originally stipulated to file their motion for summary judgment on  
 12 October 19, 2020, *see* Dkt. #10, they have sought and obtained four extensions of time. Dkts.  
 13 #12, #16, #25, and #28. The Court does not entirely understand why Plaintiffs are delaying this  
 14 case but will grant no further extensions. Having reviewed the relevant briefing, the Court finds  
 15 and ORDERS that Plaintiffs' Motions, Dkts. #29 and #30, are DENIED. Plaintiff's briefing is  
 16 past due. Plaintiffs are to file their summary judgment motion no later than **Monday, January**  
 17 **25, 2021**. The existing briefing schedule set forth at Dkt. #28 will otherwise remain unchanged.  
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19 DATED this 22<sup>nd</sup> day of January, 2021.  
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23 RICARDO S. MARTINEZ  
 24 CHIEF UNITED STATES DISTRICT JUDGE  
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